

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE TRELL MATHIS,

Defendant-Appellant.

UNPUBLISHED

April 24, 2007

No. 268149

Saginaw Circuit Court

LC No. 05-026472-FC

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

MEMORANDUM.

Defendant was tried before a jury and convicted of armed robbery, MCL 750.529. His conviction arose from a hotel robbery involving four males. One of the four pointed a gun at the hotel desk clerk and demanded money; two others stood by, and one waited outside. Defendant was sentenced to 15 to 23 years in prison. He appeals as of right, and we affirm.

Defendant argues that the evidence was insufficient to convict him of armed robbery. Specifically, defendant argues that insufficient evidence was adduced establishing that he had pointed the gun at the hotel desk clerk. We disagree. We review defendant's sufficiency claim de novo, examining the record to determine whether a reasonable juror could have found that the prosecutor proved the elements of the charged crime. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

Defendant cites conflicts in the evidence concerning the identification of the gunman. Defendant testified that he never entered the hotel. However, three eyewitnesses, including the hotel desk clerk, testified that defendant did enter the hotel. We resolve conflicts in the evidence in favor of the prosecution. *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000). Defendant also points to inconsistencies between the desk clerk's testimony at the preliminary examination and her testimony at trial.¹ This is in essence a challenge to the desk clerk's credibility. A challenge to a witness' credibility based on alleged testimonial inconsistencies goes to the weight of the evidence. *People v Naugle*, 152 Mich App 227, 235-236; 393 NW2d

¹ At trial, the desk clerk identified defendant as the gunman. At the preliminary examination, however, she had stated that defendant was the outside lookout. She also testified at the preliminary examination that defendant "looks just like the one with the gun."

592 (1986). We defer to the jury's superior "position to decide the weight and credibility to be given" the desk clerk's testimony. *People v Palmer*, 392 Mich 370, 376; 220 NW2d 393 (1974).

Moreover, there was ample circumstantial evidence to convict defendant. When the police arrested him, they found rolled coins taken from the hotel in his pockets. Nearby, the police found a packet of bills taken from the hotel, as well as the gun used during the robbery. This evidence was sufficient to support the jury's verdict. See *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993) ("Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.").

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Stephen L. Borrello